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Application No. 10/800,789

Support documentation referenced in the reply letter will be sent with a separate fax on this same date (13 October 05).

If errors in fax transmission occur the entire correspondence will be available to the USPTO in a few days. It will be sent via certified mail.

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OCT 13 2005

Mark Alan Court  
306 3<sup>rd</sup> Street  
Wheatland, CA 95692

12 October 2005

In regards to: Patent Application 10/800,789

Director  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Subject: Reply to Final Office Action Summary (Page 1 of 6)

Dear Sir or Madam,

With all due respect to the examiner Mark Tsidulko and primary examiner John Ward I am respectfully requesting a review of my patent application by the Director of the USPTO. First, I believe the examiner Mark Tsidulko made mistakes in the patent application review and correspondence process that may have placed my patent application in a compromising position. Secondly, I believe that Mark Tsidulko made errors in judgment pertaining to the rejections of my patent claim. The following is provided for full consideration in support of these claims. When I received the first Office Action Summary on 21 July 05 I responded initially by calling both Mark Tsidulko and John Ward on 22 July 05 to explain that I had reviewed the claims of Lamparter's invention (US 5,604,480) that was referenced in the Claim Rejections. I stated that I did not see any correlation between the claim for my invention and Lamparter's claims. During these conversations neither Mark nor John could provide any documented information from Lamparter's claims to convince me that my patent claim was infringing upon Lamparter's invention. For this reason during the conversation with John Ward I requested that I receive another Office Action Summary with the Claim Rejections removed. John Ward suggested that I write a rebuttal. I believed from the conversation with John Ward that he was trying to help me. Based on these conversations I responded to the first Office Action Summary by submitting an amendment with a "Currently amended" claim and a "new" claim that corrected the basic format problems noted in the Claim Objections and attempted to move the application forward. I also submitted a letter with my respectful arguments as to why I believe my invention is different in design, purpose and patentable protection when compared to the claims of Lamparter's "Flashing caution/stop bus light assembly". A copy of that letter (Subject: Reply to Office Action Summary that is dated 14 August 2005) is included with this correspondence. After I responded to the first Office Action Summary and addressed both the Claim Objections and Rejections the only response I received about my currently amended claim and new claim was a "Notice of Non-Compliant Amendment" stating that the "status identifiers" were incorrect and needed to be corrected. A copy of that letter from the USPTO is also

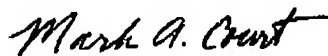
included with this correspondence. That letter was all that I received during this response from the USPTO. There wasn't anything in writing about my currently amended claim or new claim. There wasn't anything in writing that stated whether or not I had satisfied the requirements of the first Office Action Summary Claim Objections. More importantly there wasn't anything in writing that responded to my arguments against Mark Tsidulko's Office Action Summary Claim Rejections. The fact that the only correspondence that I received from the USPTO referenced the status identifiers led me to assume that my arguments had been acknowledged. It also led me to believe that the only problem was the "status identifiers" for the currently amended and new claim. Therefore I responded to the status identifier correspondence by canceling claim one (1) and submitting claim two (2) as "new" in an amendment document to my application. I requested taking these steps in the letter dated 14 August 2005. Then only after submitting my amendment document did Mark Tsidulko respond with his second (and Final) Office Action Summary which included Claim Objections (minor wording problems) which I have fully addressed in the amendment document included with this correspondence. It also included the Claim Rejections very similar to those included in the first Office Action Summary. However, there was a big error as the second Office Action Summary continues to address these Claim Rejections referring them to Claim One (1). See the highlighted and underlined text on the copy of the Office Action Summary Claim Rejections page included with this correspondence. Claim 1 was canceled as a result of my first amendment document submission. Because claim 2 was acknowledged as at issue in the second Office Action Summary this error confused me leaving questions unanswered as how the Claim Rejections directed towards claim 1 now apply to claim 2. I could only assume that the examiner meant to apply his Claim Rejections to claim 2. This is why I believe this Office Action Summary should not be final at this stage and my application should not have been published and made public. From this action I believe my patent claim may have been compromised. To continue (and with all due respect to the examiner) I present the following that I believe clearly shows that the examiner made errors in judgment in documentation of his Claim Rejections. In the second Office Action Summary the examiner states that my arguments were fully considered but were not persuasive. However, the examiner only addresses one (1) of several of my arguments and fails to address one of my most important arguments about what is specifically described (documented) in Lamparter's claims. He then offers as a basis of his decision two basic similarities in the claims and his perception that Lamparter could achieve any design with his Flashing caution/stop bus light assembly. The examiner offers this as a perception but does not document specific facts from within the scope of Lamparter's claims or patent application to point out where my claims specifically infringe upon Lamparter's claims. Therefore for the Director's review I will systematically argue every part of the examiner's Claim Rejections. These arguments are basically the same arguments that I presented earlier in response to the first Office Action Summary (letter dated 14 Aug 2005). I have fully reviewed the claims and

patent application for US 5,604,480 as posted on the USPTO. The claims of Lamparter's invention document protection for a "Flashing caution/stop bus light assembly" that uses light elements to illuminate word messages such as "CAUTION", "STOP", "STOPPING" and "DO NOT PASS" to drivers. The light elements also illuminate word messages in different colors as a bus loads and unloads passengers. By comparison, the claim for my invention documents light elements that are physically arranged in a form so that when they are illuminated they display two cats sitting together forming one heart shape with their bodies, paws and tails. I believe this to be a patentable novelty as it is documented in my claim. This illumination is not documented anywhere in Lamparter's claims or application. The only shape described (documented) in Lamparter's claims to be illuminated with the light elements is a "hexagon" shape that is used in conjunction with the word message "STOP". Lamparter's claims as documented do not in any way correlate to my invention in design or purpose of electrical functionality. Therefore my claim as documented does not infringe upon Lamparter's claims as documented. As stated in Mark Tsidulko's Office Action Summary Claim Rejections "The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action: A person shall be entitled to a patent unless – (b) the invention was patented or described in a printed publication in this or a foreign country...". Fact, no where in Lamparter's claims or patent application is it described (documented) that his invention has any type of light elements arranged to display and illuminate two cats sitting together to form one heart shape with their bodies, tails and paws. Nor does he document any other method of obtaining such an illumination or document any intention whatsoever to do so. The only shape described (documented) in his claims is a "hexagon" shape. Therefore I argue that as documented in the Lamparter's claims and patent application it is not "anticipated" by Lamparter as suggested by the examiner. Further as stated in the Claim Rejections "Lamparter discloses (Figs. 2, 5) a lighting device having a plurality of arrays of LEDs [20'] that form a plurality of differently shaped symbols." Fact, Lamparter's claims do not describe (document) a plurality of differently shaped symbols or a method to display a plurality of differently shaped symbols. What is described (documented) in his claims is an intended use of the light elements to illuminate word messages such as "CAUTION", flash word messages in colors to alert drivers, and display only "one" shape (hexagon) in conjunction with the word message "STOP". Further as documented in the Claim Rejections "The device includes an electrical circuit ([53]+[62]) and a light having two different colors (col.2, lines 25-30)." Fact, the claim for my invention documents an electrical circuit, and light elements that display two colors but are used for a totally different design and electrical purpose. My invention as documented in my claim uses light elements to illuminate the form of two cats that form one heart shape with their bodies, tails and paws. One color is for the cats and one color is for the inner heart shape. The illumination of these two colors with this form produces a pleasing visual effect. I built a fully functional prototype (photo included in my application) that uses an electrical circuit and light elements to display (illuminate) the form of two cats sitting together to form one heart shape with their bodies, paws and tails. I believe that

my prototype is a patentable novelty, that I am the original inventor and that my invention does not in any way whatsoever infringe upon Lamparter's invention based on the scope of his patent application and claims as documented therein. My prototype is based on my own drawings that are protected with registered US copyrights. I have owned these copyrights since 1993 and the copyright registration numbers are documented in my patent application. The examiner concludes his Claim Rejections with "It would have been an obvious matter of design choice to provide the different decorative shapes formed by the arrays of the LEDs for the purpose of an aesthetic appearance." I argue that this is a mere perception of the examiner not based on fact as documented within the scope of Lamparter's application and claims. Fact, the words "decorative shapes" are misleading and a method to illuminate decorative shapes is not described (documented) in Lamparter's claims. Further, there are only two possible ways that Lamparter's array of LEDs could illuminate two cats forming one heart shape with their bodies, paws and tails. First, the LEDs would have to be physically arranged in such a shape with an electrical circuit controlling them to illuminate such a shape. As described (documented) in Lamparter's claims and application the LEDs are not physically arranged in such a shape. Second, the only other possible way that the LEDs could illuminate two cats forming one heart shape with their bodies, paws and tails would be with LEDs that are under programmed microprocessor control. If Lamparter intended (as an obvious matter of design choice) that his invention would illuminate a form such as documented in my claim or any other illuminated form or shape he would have to perceive the illuminations first and then program a microprocessor to control the LEDs to achieve such illuminations. Lamparter does not describe (document) such programmed microprocessor control in his claims or application. By comparison, my claim contains written documentation to protect my prototype that as built illuminates two cats that form one heart shape with the bodies, paws and tails. See my electronic qualifications listed at the end of this correspondence that verifies my knowledge to make the preceding statements about how these illuminations can be achieved. Further in the second Office Action Summary "Response to Arguments" the examiner states "In response, the reference cited in the Office Action discloses the device having the structure in accordance with the claim limitations. The structure can obtain any desired shape, which is a matter of design choice, because does not change functionality of the device and used for the purpose of an aesthetic appearance only." Wording in this quotation is an attempt to use legal terminology to persuade but it is not based on fact as disclosed in the scope of Lamparter's application and claims. As argued above, the reference cited does not have LEDs physically arranged to form two cats sitting together to form one heart shape with their bodies, paws and tails. The reference cited does not contain programmed microprocessor control to illuminate various shapes and therefore the structure in the reference cited cannot achieve any desired shape. By comparison to the reference cited, my claim contains written documentation stating that my invention as built can illuminate (in two colors) two cats sitting together to form one heart shape with their bodies, paws and tails. I believe my claim documents a patentable novelty that is not documented in

the claims of the reference cited. Additionally, Lamparter discloses in his patent application several issued U.S. patents similar to his invention that date as far back as 1958. Considering the examiner's reasoning, I argue why did Lamparter receive a patent dated February 1997? The answer lies specifically within the scope of the inventor's claims and application as documented. I believe that if today Lamparter were to physically re-arrange his LEDs or program a microprocessor to control the illumination of two cats sitting together to form one heart shape with their bodies, paws and tails he would be infringing upon my patent claim as documented in my application and submitted to the USPTO. Further, as documented in the Response to Arguments "Difference between the "Utility patent" and "Design Patent" Applicant can find in the MPEP, chapter 1500". For the examiner to suggest a design patent presents a contradiction to everything the examiner documented in his Claim Rejections. Further, I considered both types of patents before submitting my patent application. I built a fully functional prototype that uses an electrical circuit that powers light elements (in two colors) that illuminate a pleasing visual effect of two cats sitting together to form one heart shape with their bodies, paws and tails. Therefore I seek the stronger and broader utility patent protection to protect the electrical functionality of my invention. I conclude my arguments that Lamparter's invention and my invention are totally separate inventions in both design and purpose of electrical functionality as documented in the claims and applications. The inventions are two totally separate patentable novelties. For the reasons stated above, I respectfully request that the Director and examiner reconsider all of the facts in this letter and all documentation to date involving my patent application and authorize issuance of a patent for my application. In closing I would like to state that this letter is submitted with all due respect to the examiner, primary examiner and Director. I understand that the patent process is hard work for the examiners and as humans we all make mistakes. Additional important information is submitted on the next page. This correspondence will also be sent by certified mail to ensure delivery in the time frame required by the USPTO.

Respectfully submitted,



Mark Alan Court  
Inventor of the "Cats' Heart Shape" Night Light

The following additional information is disclosed to protect my invention titled "Cats' Heart Shape" Night Light.

I have decided to seek legal counsel from a patent attorney while I await the decision of the Director of the USPTO for the following reasons: 1) Establish proof with a patent attorney that I am the original inventor as documented in my patent application and claim. 2) Protect against possible future infringements. 3) Review my entire patent application process to date with the USPTO and discuss future legal options available to me. 4) Prepare for an appeal if an unfavorable decision is rendered by the USPTO.

The following information is provided to verify my knowledge to make statements about electronic circuits in this response letter.

#### Electronic Qualifications

I was formally trained by the USAF as an electronic maintenance technician. This training included applying basic electronic theory, troubleshooting electronic circuits and specific training to maintain a variety of computer and electronic communications systems. I spent 20 years maintaining USAF communication systems and now maintain computer and network systems as a civilian. I hold an associate degree in Electronic Systems Technology and I hold industry certification as a Cisco Certified Network Associate (CCNA). Documented proof is available upon request.